

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

REQUEST FOR PROPOSALS

DATE OF ISSUE: February 13, 2009

TO: Potential Providers of Services

RE: Request for Proposals for a downtown revitalization consultant to assist with up to ten (10) communities in creating a downtown market and action strategy revitalization plan

I. Services Sought by Authority:

The Michigan State Housing Development Authority ("Authority") is seeking an individual or firm that is authorized to do business in Michigan. The Michigan Main Street Center @ MSHDA is looking for a downtown revitalization consultant to assist with up to ten (10) communities in creating a downtown market and action strategy revitalization plan. The program, Blueprints for Michigan's Downtowns, has been in existence for six years. A detailed description of the work is described in the Scope of Work, which is attached as Exhibit A to this Request for Proposals.

II. Required Qualifications:

The following is a preliminary statement of the major tasks involved for developing the end product of this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub-tasks or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques.

1. Devise a uniquely energetic community process that ultimately leads to the creation of an enthusiastic implementation of the downtown revitalization plan.
2. The Contractor shall plan and conduct an orientation meeting for up to ten (10) communities on August, 2009.
3. Contractor will produce an innovative downtown market analysis in the area of residential, commercial and office needs for up to ten (10) communities in the State of Michigan during the contract period. The expectation is that the community and public will be involved in all aspects of developing the end product. With consultant analysis of data and trends, the plan will offer specific action/implementation steps for downtown revitalization tailored to the individual characteristics and needs of each traditional downtown. However, all plans must also have a consistent format and philosophy.

4. Provide for each community a “how to” proposal for successful revitalization of that community’s traditional downtown.
5. The downtown revitalization action plan should be very inclusive in nature and address, among other issues, public and private infrastructure needs, organizational capacity issues, use of state economic revitalization tools, a residential, office and retail market study and analysis, timelines and task assignments, and local business assistance plans.
6. The plan must be action oriented and “how to” focused.
7. **The Contractor will be assisted in these duties when each community meets or completes the following:**
 - 1) Have an eligible traditional downtown.
 - 2) Provide a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of the targeted area.
 - 3) Provide a community profile, specifically of the proposed downtown/traditional area and include pictures, maps and definition/outline of the targeted area.
 - 4) Provide letters of commitment from as wide a variety of stakeholders both inside and outside the targeted area as possible.
 - 5) Show an organizational chart of all local agencies involved in downtown or traditional center of commerce re-development efforts. Specifically identify the lead agency for implementation of the strategic study.
 - 6) Develop a needs assessment of the proposed downtown or traditional center of commerce area.
 - 7) The community must be prepared to put together a long term, diverse revitalization taskforce that will assist the consultant during the planning process and serve as an advisory, monitoring and reporting vehicle for five (5) years of plan implementation.

The Authority has identified the following qualifications that it believes are necessary for the successful performance and completion of the services described in the Scope of Work. The "Prospective Contractor" must:

- A. Have experience providing the services described in the Scope of Work or similar services.

- B.** Assign experienced personnel to perform the services or have personnel supervised by experienced staff.
- C.** Be a Michigan entity (limited partnership, limited liability company, for profit corporation or non-profit corporation), a firm that is authorized to do business in the State of Michigan, or a division or office of a Michigan municipality. The Prospective Contractor will be required to submit:
 - 1.** A Certificate of Status issued by the Corporations and Securities Bureau of the Michigan Department of Labor & Economic Growth; and
- D.** Have phone, internet, and e-mail access. Internet and e-mail access must be adequate enough to allow Prospective Contractor to download and upload data and files and receive files and attachments from Authority staff.
- E.** Agree to satisfy the following requirements prior to the execution of the contract with the Authority:
 - 1.** Indemnify, defend and hold harmless the Authority, its Board, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:
 - a.** any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or resulting from (1) the "Services" provided or (2) performance of the Services, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Agreement.
 - b.** any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Agreement;
 - c.** any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
 - d.** any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or resulting from

the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the Authority;

- e. any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.
- f. any action or proceeding threatened or brought against the Authority to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service, infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States.

2. Maintain and provide evidence, satisfactory to the Authority, of the following insurance coverage:

- a. Errors and Omissions Insurance for \$1,000,000 for each occurrence and \$1,000,000 annual aggregate.
- b. Worker's Compensation Insurance (if required under state law). Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable.

F. Agree to execute a contract acceptable to the Director of Legal Affairs. For purposes of illustration only, a draft of the proposed contract is attached.

III. Submitting Proposal:

Firms wishing to submit proposals must submit one (1) original and three (3) copies of a proposal to provide the services described in Exhibit A (Scope of Work). Submitted proposals must respond to and address the questions listed in Exhibit B (Proposal Instructions and Selection Criteria).

The due date for the Authority's receipt of the proposals responding to this Request for Proposal ("RFP") is March 13, 2009 at 4 p.m.

The Authority shall not be liable for any costs that a firm or individual may incur while preparing a proposal. The Authority shall not be liable for any costs that a firm or individual may incur prior to the complete execution of a contract. If the Authority enters into a contract, the Authority's consideration (payment) shall be limited to the term of the contract.

IV. Communications with Authority Staff Prior to Selection of Proposal

Any questions raised by Providers concerning the RFP may be submitted, in writing, via mail, email or fax, using the subject line to the attention of:

Laura Krizov
Manager, Main Street Center
MSHDA
735 East Michigan Ave.
PO Box 30044
Lansing, Michigan 48909

E-mail: krizovl@michigan.gov
Fax: (517) 335-5925

To ensure a fair and impartial process, Authority staff will not address non-written questions concerning the RFP. Phone calls involving the RFP or related questions will not be accepted. Firms submitting bids shall not contact any Authority staff or Board members except Laura Krizov — all communications with Laura Krizov must be received in writing by February 27, 2009

MSHDA will answer appropriate questions received in a timely manner (e.g., information not covered/answered in the RFP, interpretation issues, etc.) by email to all Providers on or before March 6, 2009. MSHDA will hold no other question sessions or bidders conferences.

If, prior to the proposal deadline, the Authority deems it necessary to provide additional clarifying information, or to revise any part of the RFP, supplements or revisions will be provided to all recipients of the RFP who have indicated they will submit a proposal.

Proposals will then be evaluated based on the terms and conditions of the RFP, any supplements or revisions thereof, and the answers to any written questions.

V. Selection of Proposal:

The Authority's Michigan Main Street Center will select the proposal based on Selection Criteria, which is set forth in Exhibit B (Proposal Instruction and Selection Criteria).

VI. Processing Required Forms & Contract Execution:

The required forms will be submitted to Civil Service for approval, **prior** to Board approval. Contracts that equal or exceed \$25,000 must be Board approved. Thereafter, a contract will be forwarded to the "Selected Firm" that submitted the selected proposal with instructions to execute and return three copies. Upon receiving the executed copies, the Office of Legal Affairs will submit the executed copies to a duly authorized Authority signatory for execution on behalf of the Authority.

VII. Michigan Freedom of Information Act

Documents submitted to the Authority shall be subject to the Michigan Freedom of Information Act ("FOIA"). In the event a request for submitted documents is made to the Authority, the Authority's FOIA Coordinator will redact or withhold information and/or documents that are exempt from disclosure under FOIA. See *MCL 15.243*. Please note that any requests by non-MSHDA personnel to review proposals will be denied until the deadline for submission of the bids has expired. See *MCL 15.243(1)(j)*.

RFP - EXHIBIT A

SCOPE OF WORK

I. Overview:

The Michigan State Housing Development Authority ("Authority") is seeking an individual or firm that is authorized to do business in Michigan. The Main Street Center @ MSHDA is looking for a downtown revitalization consultant to assist with up to ten (10) communities in creating a downtown market and action strategy revitalization plan. The program, Blueprints for Michigan's Downtowns, has been in existence for five years.

The Office of the Michigan Main Street Center @ MSHDA is the Michigan State Housing Development Authority ("Authority") who is seeking an individual/firm to conduct an action strategy revitalization plan.

The Blueprints for Michigan's Downtowns initiative nurtures downtown and near-downtown neighborhoods that are mixed use, pedestrian-friendly, safe and clean, diverse, densely populated, and function 24/7. The goal is to ensure Michigan communities are attractive places to live, raise a family and start and grow a business. In order for the state's overall economy to succeed, its traditional downtown centers of commerce must gain population, generate business opportunities, and attract private investment.

In a continuing effort to impact the development and revitalization of Michigan's traditional downtowns, the Authority and the Michigan Municipal League (MML) are offering a seventh year of the Blueprints for Michigan's Downtowns program. This program produces, through a market-based approach, an action-oriented strategy for downtown revitalization activities. The process itself, perhaps, should be as important as the final product, generating unique and new community energy, public support, political support and business support for a community's traditional downtown revitalization efforts. The action strategy report should lead a community toward a path of 3-5 year downtown revitalization activity that creates new private jobs, private investment, and housing opportunities and SEV increases in the community's downtown (Blueprint) area.

The Authority seeks the services to help provide the product of a downtown market study and analysis in the areas of commercial, office and residential (especially tailored to urban, high density possibilities). The expectation is that the community and public will be involved in all aspects of developing the end product. The consultant will also provide specific action/implementation steps for revitalization. Downtown development plans for each community need to be tailored to the individual character and needs of each traditional downtown, but all 10 plans must also have a consistent format and philosophy. The action revitalization of that community's traditional downtown.

It is expected that the traditional downtown action plan will be very inclusive in nature and will address, among other issues, public and private infrastructure needs, local organizational capacity issues, use of state economic revitalization tools, a residential, office and retail market analysis, timelines and task assignments, and local business assistance plans. The plan must be action oriented and "how to" focused

II. Objectives, Tasks & Activities, and Deadlines:

A. Objectives. To successfully perform the services described in Section I above, the "Contractor" must satisfy the following objectives:

- a. Consultant will provide a downtown market study and analysis of areas of commercial, office and residential needs of each community.
- b. Community and public will be involved in all aspects of developing the end product.
- c. Consultant will provide specific action/implementation steps for revitalization.
- d. Downtown development plans for each community need to be tailored to the individual characteristics and needs of each traditional downtown. All plans must also have a consistent format and philosophy.
- e. It is expected that the traditional downtown action plan will be very inclusive in nature and will address, among other issues, public and private infrastructure needs, local organizational capacity issues, use of state economic revitalization tools, a residential, office and retail market analysis, timelines and task assignments, and local business assistance plans. The plan must be action oriented and "how to" focused.

B. Activities/Responsibilities Necessary to Complete Scope of Work.

To achieve the objectives, the "Contractor" shall perform the following activities/tasks:

The following is a preliminary statement of the major tasks involved for developing the end product of this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub-tasks or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques.

- a. Devise a uniquely energetic community process that ultimately leads to the creation of an enthusiastic implementation of the downtown revitalization plan.
- b. The Contractor shall plan and conduct an orientation meeting for up to ten (10) communities on August, 2009.
- c. Contractor will produce an innovative downtown market analysis in the area of residential, commercial and office needs for up to ten (10) communities in the State of Michigan during the contract period. The expectation is that the community and public will be involved in all aspects of developing the end product. With consultant analysis of data and trends, the plan will offer specific action/implementation steps for downtown revitalization tailored to the individual character and needs of each traditional downtown. However, all plans must also have a consistent format and philosophy.

- d. Provide for each community a “how to” proposal for successful revitalization of that community’s traditional downtown.
- e. The downtown revitalization action plan should be very inclusive in nature and address, among other issues, public and private infrastructure needs, organizational capacity issues, use of state economic revitalization tools, a residential, office and retail market study and analysis, timelines and task assignments, and local business assistance plans.
- f. The plan must be action oriented and “how to” focused.
- g. **The Contractor will be assisted in these duties by each community meeting or completing the following:**
 - 1) Have an eligible traditional downtown.
 - 2) Provide a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of the targeted area.
 - 3) Provide a community profile, specifically of the proposed downtown/traditional area and include pictures, maps and definition/outline of the targeted area.
 - 4) Provide letters of commitment from as wide a variety of stakeholders both inside and outside the targeted area as possible.
 - 5) Show an organizational chart of all local agencies involved in downtown or traditional center of commerce re-development efforts. Specifically identify the lead agency for implementation of the strategic study.
 - 6) Develop a needs assessment of the proposed downtown or traditional center of commerce area.
 - 7) The community must be prepared to put together a long term, diverse revitalization taskforce that will assist the consultant during the planning process and serve as an advisory, monitoring and reporting vehicle for five (5) years of plan implementation.



EXHIBIT B

PROPOSAL INSTRUCTIONS AND SELECTION CRITERIA

I. PROPOSAL DELIVERY/SUBMISSION:

- A. Due Date.** The due date for the Authority's receipt of the proposals responding to this Request for Proposal ("RFP") is March 13, 2009 at 4 p.m.
- B. Originals and Copies:** Submit one (1) original and three (3) copies of a proposal to provide the services described in Exhibit A (Scope of Work).
- C. Delivery of Proposal:** Addresses for the delivery of proposals are as follows:

DELIVERY VIA HAND DELIVERY OR COMMERCIAL OVERNIGHT SERVICE:

Laura Krizov, Manager, Main Street Center
Michigan State Housing Development Authority
735 E. Michigan Avenue
Lansing, MI 48912

DELIVERY VIA U.S. POSTAL SERVICE:

Laura Krizov, Manager, Main Street Center
Michigan State Housing Development Authority
P.O. Box 30044
Lansing, MI 48909

- D. Selection of Proposal.** It is anticipated that the MSHDA review will take two weeks after the closing date for submitting proposals. The selected proposal will be announced May, 2009 via e-mail and posting on the Authority's website.

II. **PROPOSAL FORMAT:**

- A. Overview:** Proposals must be submitted in the format described in Section B (Format of Proposal) below. There should be no attachments, enclosures or exhibits other than those considered by the "Prospective Contractor" to be essential to a complete understanding of the proposal. Each section must be clearly identified with appropriate headings.

The proposal should be clear, accurate, and complete, with sufficient detail to enable the Authority to evaluate the services and methods proposed. Brevity is appreciated.

B. Format of Proposal:

1. BUSINESS ORGANIZATION. Answer/Address the following:

- a. Full name and address of Firm:
- b. Branch office if applicable:
- c. Type of entity (e.g., Michigan corporation, Michigan nonprofit corporation, Michigan Limited Liability Company):
- d. If entity is foreign (i.e., non-Michigan), is it licensed to do business in Michigan?
- e. Submit Certificates of Status dated within 30 days if firm is a Michigan entity. (Certificate to proposal.)
- f. Submit Certificate Authorizing Firm to Do Business in Michigan dated within 30 days if firm is a not a Michigan entity.
- g. **Submit Tax Identification Number for Firm.**

2. MANAGEMENT & PERSONNEL: Answer/Address the following:

- a. **Officer and Management Summary:** Identify officers and managers by name and position. Identify managers and/or officers who will manage the contract if it is awarded. *(Resumes or Curriculum Vitas of managers or officers may be provided.)*

- b. **Bidder's Authorized Contact:** Include the name and telephone number of person(s) in your organization authorized to expedite any proposed contract with MSHDA. An official authorized to commit the bidder to the terms and conditions of the proposal must sign the proposal. The Provider must clearly identify the full title and authorization of the designated official and provide a statement of bid commitment with the accompanying signature of the official.

3. EXPERIENCE

- a. **Prior Experience of Firm:** Indicate prior experience of your firm that you consider relevant to the successful accomplishment of the project described in this RFP. Include sufficient detail to demonstrate the relevance of such experience. Include descriptions of qualifying experience, including project descriptions, costs, and starting and ending dates of projects successfully completed. Also include name, address, and telephone number of the responsible official of the client organization who may be contacted.
- b. **Experience of Proposed Personnel Assigned to Provide Services:** Describe the education and experience of personnel who will likely be assigned to provide the proposed services, including managers who may oversee work of personnel. *(Provide resumes or curriculum vitas of assigned personnel as attachments/enclosures.)*
- c. **Additional Information and Comments:** Include any other information that is believed to be pertinent but not specifically asked for elsewhere.

4. PROPOSED SERVICES

- a. **How Service will be Rendered:** Describe how the services will be rendered. Address and describe the process used to render the services.
- b. **Use of Subcontractors:** If any work will be subcontracted, describe the following:
 - i. Work that will be subcontracted;
 - ii. The process used to select the subcontractors;
 - iii. The contractor's experience and expertise; and

- iv. The names of the firms/individuals (s) who will perform the subcontracted work.
- c. **Standards:** Describe or address the following:
 - i. How quality of service will be monitored and ensured.
 - ii. Whether "best practices" will be followed. (If applicable, identify the organization and/or documents that establish such standards.)
- d. **Security of Data:** If the services to be rendered require the collection and/or use of confidential and/or personal data, confirm the following:
 - i. Has your firm established and used a policy to address the security of paper and electronic data.
(Please do not submit a copy of your security policy.)
 - ii. Does your policy address the removal of confidential and/or personal data from storage media? (For example, does your firm's policy include the removal or "wiping" of data from hard drives when a computer is no longer used?)
- e. **Copyrighted Materials.** If the services require the production of a written product for the Authority, please confirm the following
 - i. Any and all products produced as a result of this contract shall be the property of the Authority.
 - ii. Your acknowledgment that submitted documents will not contain in part or whole copyrighted materials.

5. PRICE PROPOSAL & BUDGET

- a. **Price Proposal:** All rates quoted in proposals submitted in response to this RFP will be firm for the duration of the contract. No price changes will be permitted.
- b. **Budget:** Include in the proposal a line item budget that identifies all expenses related to the work to be performed. By submitting the bid, the provider acknowledges that it bears the risk that its expenses may exceed the proposed amount. The budget should include applicable items, which may include the following:

- Staff costs (# of hours/per hour rate/etc.)
- Costs of supplies and materials
- Other direct costs
- General and administrative burden or overhead
- Transportation costs
- Total budget

6. SCHEDULE/TIMELINE

Schedule: Using the schedule for delivery of services set forth in the Scope of Work, cite the proposed deadlines for completing the tasks within Scope — see the table below:

Completed Service/Project Components	Estimated Completion Dates
<i>(Using Scope of Work, list activities and/or deliverables/services contractor is expected to complete)</i>	<i>(Insert estimated deadline)</i>

7. SIGNATURE CLAUSE TO BE SIGNED BY AUTHORIZED SIGNATORY OF FIRM

Signature Clause: Insert the following signature clause at the end of the proposal and have an authorized signatory for the firm sign it:

I confirm that I have submitted this proposal on behalf of (INSERT NAME OF FIRM) in response to the Michigan State Housing Development Authority's Request for Proposals for Blueprints for Michigan's Downtowns.

By: _____

Its: _____

Date: _____

III. Selection of Proposal

A. Selection Criteria. The Authority's Michigan Main Street Center will select the proposal based on Selection Criteria listed

- | | | |
|----|---|-------------|
| 1. | Experience, education or certification | (45 Points) |
| 2. | Communication skills, including clarity of proposal | (10 Points) |
| 3. | Adequacy of staff necessary to perform services | (15 Points) |
| 4. | Amount of time available to perform services | (10 Points) |
| 5. | Reasonableness and Feasibility of Fee | (20 Points) |

Total Possible Points:

100 Points

B. Expected Deadline for Selecting Proposal. The Authority expects to confirm selection of the proposal by e-mail and/or First Class Mail by March 13, 2009.

C. Cancellation of Selected Proposal. The selection of a proposal by the Authority may be cancelled at any time prior to the complete execution of a contract. Reasons for canceling the selected proposal may include, but are not limited to, the following:

1. Refusal of Department of Civil Service to process required forms; and/or
2. Refusal of duly authorized Authority signatory to execute the contract.

If the Authority cancels its selection of a proposal, the Authority may repost this or a similar RFP and re-seek proposals.

CONTRACT NO.

**MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
AGREEMENT FOR PROFESSIONAL SERVICES**

^ [Contractor Name]

THIS AGREEMENT, made and entered into as of the **1 day of August 2009**, by and between the **MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**, a public body corporate and politic, Lansing, Michigan (hereinafter referred to as the "**Authority**") and **^ [Contractor Name]** (hereinafter referred to as the "**Contractor**").

WITNESSETH THAT:

The Authority and the Contractor do mutually agree as follows:

1. **Services Rendered/Scope of Work.** That the Contractor shall, in a satisfactory and proper manner as determined by the Authority, render the services described in Exhibit I, which is attached and made a part of this Agreement.
2. **Term.** This Agreement shall cover work performed by the Contractor during the period of time ending **August 31, 2010**.

DRAFT

3. Contract. Price and Payment.

- a. The total amount to be paid by the Authority to the Contractor under this Agreement shall not exceed **[spell out amount] (\$)**.
- b. Billings for services will be based on an hourly rate not to exceed **\$ per hour** for professional services. Out-of-pocket expenses to be reimbursed at the regular per diem rate in effect when services are rendered.
- c. Payment will be made upon presentation of invoices submitted periodically for work performed. Invoices should be submitted to the **^[specify office and division of the Authority]^** of the Authority and should include the following:
 - (1) Authority's contract number as shown above.
 - (2) Specific service performed and development name and number, if applicable.
 - (3) Amount paid to date on this contract.
 - (4) Number and amount of this invoice.

Final payment shall be made upon the satisfactory completion and submission of all required work and documents.

4. Record Keeping. The Contractor shall maintain such personnel records as are deemed necessary by the Authority to assure a proper account for all engagement costs. These records will be made available for audit purposes to the Authority and the Auditor General of the State of Michigan, or any authorized representative, and will be retained for three years after the expiration of the Agreement unless permission to destroy them is granted by both the Authority and the State of Michigan.

DRAFT

5. **Nondiscrimination.** In accordance with Acts No. 220 and 453 of the Public Acts of 1976, as amended, the Contractor hereby agrees in connection with the performance of services under this Agreement not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, marital status or handicap. Breach of this covenant may be regarded as a material breach of this Agreement.

6. **Failure to Perform.** In the event the Contractor fails to perform services required under this Agreement or performs services hereunder in an improper manner, the parties hereto agree that the damage that the Authority will sustain as a result thereof will be substantial but will be difficult, if not impossible, to ascertain, and therefore, the parties hereto agree that in the event of the Contractor's failure to perform services required hereunder or the Contractor's performance of services in an improper manner, the Authority shall be entitled to a credit against the Contractor's current unpaid billings for amount previously paid to the Contractor after the Contractor's non-performance of improper performance. For the purposes of the foregoing, the parties hereto agree that the Authority shall have sole discretion in determining the adequacy of the Contractor's performance and the amount of credit to be taken. The damages for the Contractor's inadequate or improper performance, as provided herein, shall not be exclusive but shall be in addition to any other damages which the Authority may be entitled to for the Contractor's default under this Agreement.

7. **Assigned Personnel.** The Contractor hereby represents that the personnel it will assign to perform the services under this contract shall possess the requisite education, competence and experience to perform such services. The Contractor further

DRAFT

acknowledges and agrees that such personnel may be subject to the evaluation and approval of the Authority, who shall retain the right to determine the sufficiency of the education, competence and experience of the personnel assigned to perform the services identified in the attached exhibit of this contract.

8. Employees of Contractor or Key Persons.

a. Definition of Key Person. “Key Persons” shall be defined in this Agreement as individuals who perform services pursuant to this Agreement and (a) sign this Agreement on behalf of the Contractor and/or (b) are listed in Exhibit II of this Agreement.

b. Performance of Services. The Contractor acknowledges that only Key Persons shall perform the Services under this Agreement. Key Persons include the names of all employees, agents and independent contractors of the Contractor who perform or render services pursuant to this Agreement.

c. Exhibit II--Certificate Verifying Key Persons. Prior to executing this Agreement, the Contractor shall provide to the Authority the names of all Key Persons by completing Exhibit II, which is the Certificate Verifying Key Persons of the Contractor (“Certificate”). In the event the Contractor fails to provide to the Authority the names of any Key Persons, the parties shall consider the signatory for the Contractor to be the sole Key Person for the Contractor. If the Contractor wishes to add an agent, employee, or independent contractor as a Key Person during the term of this Agreement, the Contractor shall complete and submit to the Authority a Certificate for that employee, agent, or independent contractor.

d. 2007 PA 95, MCL 38.68c. The Contractor and its employees, agents, and independent contractors acknowledge 2007 PA 95, MCL 38.68c requires retirees of the

DRAFT

State Employees Retirement System ("Pensioned Retirees") who become employed by the State either directly or indirectly through a contractual arrangement with another party on or after October 1, 2007 to forfeit their state pension for the duration of their reemployment.

PENSIONED RETIREES WHO PROVIDE OR RENDER SERVICES PURSUANT TO THIS CONTRACT AND ARE DETERMINED TO BE EMPLOYEES OF THE STATE MAY FOREFEIT THEIR PENSIONS. THE CONTRACTOR ACKNOWLEDGES THAT ALL PENSIONED EMPLOYEES HAVE BEEN ADVISED TO SEEK LEGAL COUNSEL TO DETERMINE IF THEY MAY BE DEEMED EMPLOYEES OF THE STATE. THE CONTRACTOR AND THE PENSIONED RETIREES IT EMPLOYS ACKNOWLEDGE AND AGREE THAT NEITHER THE STATE, NOR THE AUTHORITY, NOR ITS EMPLOYEES, DIRECTORS, AGENTS NOR BOARD SHALL BE LIABLE TO THE CONTRACTOR OR PENSIONED RETIREE IF IT IS DETERMINED AT ANY TIME THAT THE PENSIONED RETIREE IS DEEMED TO BE AN EMPLOYEE OF THE STATE AND MUST THEREFORE FORFEIT HIS OR HER PENSION.

9. **Conflicts of Interest.** Prior to the execution of this Agreement, the Contractor acknowledges and confirms that it has delivered to the Authority a written list of all interests of the Contractor, or its officers and employees, which may create conflicts between the interests of those entities or parties and the interests of the Authority. The Contractor acknowledges that its employees, members, shareholders, agents, or independent contractors prior to or during the term of this Agreement are not employees of the State of Michigan or its units. Should a conflict of interest arise during the term of this Agreement, the Contractor shall contact the Authority's Director of Legal Affairs immediately and describe in detail the conflict of interest.

DRAFT

10. **Participation in Other Authority Programs.** With the exception of providing services to the Authority as described in Exhibit I of this Agreement, neither the Contractor nor the Contractor's employees, agents, officers, directors, shareholders or members will participate in Authority housing program or do business with the Authority under any program in which the Authority has a direct or indirect relationship without securing approval from the Authority's Director of Legal Affairs.

11. **Independence of Contractors.** The Authority shall retain the Contractor as an independent contractor, and the Contractor hereby accepts such independent contractor relationship, upon the terms and conditions set forth in this Agreement. Nothing in this Agreement shall be construed to create the relationship of employer and employee between the Authority and the Contractor or any of its employees or agents. The Contractor, its employees and Contractors, shall be deemed at all times and for all purposes to be independent contractors. The Contractor acknowledges and agrees that all payments by the Authority to the Contractor shall be made without deduction for federal, state or local income taxes, social security taxes and similar items, and that the Contractor shall be solely responsible to report income under this Agreement to the Internal Revenue Service and other appropriate taxing authorities and to pay such taxes (including, without limitation, being solely responsible to make periodic estimated payments of such taxes in accordance with applicable law). The Contractor further acknowledges and agrees that all payments under this Agreement to the Contractor by the Authority shall be reported to the Internal Revenue Service and other appropriate taxing authorities on Form 1099 (or equivalent or replacement forms). Finally, the Authority acknowledges that the manner and means of producing the services described in Exhibit I are under the control and at the discretion of the Contractor.

DRAFT

12. **Ownership of Documents and Reports.** All documents and reports delivered to the Authority shall be the property of the Authority.
13. **Disclosure of Information.** Neither the Contractor nor its agents or contractors, shall disclose information or documents created or maintained in connection with this agreement to anyone, without the prior consent of the Authority. Neither the Contractor nor its agents or contractors, shall use information or documents created or maintained in connection with this agreement to further any private interest, other than as contemplated by this Agreement, without the prior consent of the Authority.
14. **Termination of Agreement.** This Agreement may be terminated with notice at any time by the Executive Director. However, the Contractor shall be compensated hereunder for services satisfactorily performed prior to the date of termination.
15. **Michigan Law.** This Agreement shall be governed by the laws of the State of Michigan and shall be binding upon the Contractor's successors, assigns, and legal representatives.

DRAFT

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the Authority and the Contractor have executed this Agreement as of the date first above written.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

Date: _____ By: _____

^

Date: _____ By: _____

**"THIS MODEL IS A DRAFT AND IS SUBJECT
TO
REVISION IN WHOLE OR IN PART BY THE
AUTHORITY'S OFFICE OF LEGAL AFFAIRS"**